

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5476 of 1996
With
CIVIL APPLICATION No. 6554 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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CHILODA (D) GRAM PANCHAYAT - Petitioner(s)
Versus
R H PATEL & 5 - Respondent(s)

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Appearance :

MS PREETI S PARMAR for Petitioner(s) : 1, MR SV PARMAR for
Petitioner(s) : 1,
MR PJ VYAS for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.
MS SEJAL K MANDAVIA for Respondent(s) : 4 - 6.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 07/12/2006

ORAL JUDGMENT

1. The petitioner Chiloda Gram Panchayat has approached to this Court for challenging the order dated 14.12.1995 passed by the State Government in revisional jurisdiction, whereby the assessment of the rent made by the Gram Panchayat vide resolution is upheld, but on the question of quantum, it has been ordered that the matter should be referred to the Deputy Town Planner and the rent and penalty as may be finalised may be recovered by the Chiloda Gram Panchayat. It was further ordered that the amount shall be deposited in a separate account as per the order passed by this Court and the same will be subject to the outcome of the proceedings of Special Civil Application No. 6054 of 1986 and Special Civil Application No. 1360 of 1991.
2. I have heard Mr. Parmar, learned counsel appearing for the petitioner, Mr. Vyas, learned counsel appearing for private respondent No.1 representing the persons who have occupied the land, Mr. Chhaya, learned AGP for respondent Nos. 2 & 3 and Ms. Mandavia for respondent Nos. 4,5, & 6.
3. As such, upon hearing learned counsel for both the sides, the principal challenge was as to whether the State Government while exercising the revisional power could direct the reference to be made to the Deputy Town Planner for

assessment of the rent to be recovered from the occupants who have unauthorisedly occupied the land. After hearing the learned advocates appearing on both the sides, on 30.11.2006, this Court had passed the following order:

"1. I would have considered the matter for dictation of the final judgment since upon the hearing of Mr.Parmar for the petitioner, Mr.Vyas for respondent no.1 and Mr.Desai learned AGP for respondent nos.2 and 3, it prima facie appears that on one pretext or the other, the rent which is assessed as per the opinion of the Executive Engineer, R & B and the penalty are not paid by those persons who have encroached over the public property nearby national highway.

2. Mr.Vyas, learned counsel for respondent no.1 submitted that there is dispute between the Gram Panchayat and the State Government on the point of authority to collect rent for alleged encroachment and also penalty and, therefore, the matter is not finalized. He further submitted that respondent no.1 and more particularly, Chiloda Char Rasta Vepari Mandal who is represented through respondent no.1 have continued to pay @ Rs.4/- per sq.yard per year as the rent.

3. It prima facie appears that for such a encroachment over the land nearby national highway if the Executive Engineer has assessed @ Rs.60/- per sq.yard per year as the rent such cannot be said as arbitrary or exorbitant and the rent @ Rs.4/- per sq.yard is a negligible amount in comparison to the rent assessed by the Executive Engineer on the basis of which Appellate Committee passed the order. In any event, the question of authority can be

appropriately considered at a later stage but by such dispute of authority, the encroacher over the public property cannot be allowed to take undue benefit for indefinite period that too by paying rent at a negligible payment of rent of Rs.4/- per sq.yard per year.

4. It has been also stated by Mr.Vyas, learned counsel appearing for respondent no.1 that the State Government has passed the order directing to consider the matter for regularization of the possession whereas the Division Bench of this Court as per the order dated 22.7.2005 had directed for convening of the meeting and for allotment of the other land.

5. Be that as it may, keeping aside the question of regularization by giving alternative land, but it prima facie appears that until the person concerned pays the rent together with the interest @ 12% p.a., the aspect of regularization cannot be considered and it might call for further action of eviction over the public property nearby national highway. Therefore, the first and foremost requirement even before continuing with the possession as alleged encroacher and the regularization thereafter may be that the rent as has become due with the interest is required to be paid or deposited. I would have considered the matter further, however, Mr.Vyas, learned counsel appearing for respondent no.1 seeks time to get instruction of his client as to whether respondent no.1 or the members of the association are ready to deposit the amount and if yes within what time.

6. The Secretary State Government - respondent no.2 shall depute officer not below the rank of Dy.Collector on the next date of hearing. S.O., to 5.12.2006 for passing further order."

4. Thereafter, today, Mr. Vyas, learned counsel appearing for the occupant of the land declared before the Court that respondent No.1 and all other occupants who are represented by him are ready to pay the rent @ Rs. 60/- per year with the interest @ 12% from the date when it became due till the actual payment. However, he submitted that some reasonable time may be given by this Court to deposit the amount by suitable installments.

5. If there is anxiety on the part of the respondent No.1 to deposit the amount with interest, in my view, it would sufficiently take care of the assessment made by the Gram Panchayat of the rent and penalty and the reason being that, when the amount of Rs.90/- was assessed and if ultimately is ordered today be recovered, the actual amount would be more or less the same. If the amount of Rs.60/- per year per sq. yard is recovered with interest @ 12%, the same would not prejudice the rights of the Gram Panchayat qua the resolution passed for assessment of the rent and the penalty and as such, the interest @ 12%, which may be in addition to Rs.60/- per sq. yard per year can be classified as towards penalty on the amount per sq. yard per year of Rs.60/-. Further, the amount of Rs. 4/- was the initial rent and is now assessed by Rs. 60/- and the same was based

on the opinion of the Executive Engineer. I find that no further reasons are required to be recorded in this regard since Mr. Vyas, learned counsel appearing for the occupant has agreed for the amount of Rs. 60/- per sq. yard per year as the rent to be paid with interest @ 12% per annum from the date it becomes due till the actual payment. Therefore, I find that if the amount is being deposited and the occupants are ready to pay the said amount, the question of reference to Deputy Town Planner may not arise and it may sufficiently take care of the grievance raised by the petitioner in the petition for challenging the order passed by the State Government. The reasonable time of three months can be given to the occupant to deposit or pay the amount as stated hereinafter.

6. Mr. Chhaya, learned AGP appearing for respondent Nos. 3 & 4 additionally submitted that the amount was to be deposited and/or paid, subject to the outcome of the proceedings of Special Civil Application Nos. 6054 of 1986 and 1360 of 1991. He submitted that so far as Special Civil Application No. 1360 of 1991 is concerned, the same is withdrawn in view of the order passed by the Division Bench of this Court dated 22.07.2005 in Special Civil Application No. 11921 of 2005, whereby, directions were given to consider the matter for allotment of the other land and therefore, Special Civil Application

No. 1360 of 1991 came to be disposed of by this Court (Coram: Akil Kureshi, J.) on 16.11.2005, which reads as under:

"1. Learned advocate Shri Vyas for the petitioner states that the petition is instituted for and on behalf of Chiloda Char Rasta Vepari Mandal through its then President Dasratlal Prehladji Dave. He states that he has instructions to the effect that Shri Dashratlal Prehladji Dave has expired and currently one Shri Ranchhod H. Patel is the President of the Chiloda Char Rasta Vepari Mandal. He seeks permission to amend the cause title accordingly. Permission granted.

2. Learned advocate Shri Vyas further submits that several petitions involving similar issues were placed before the Division Bench which disposed of the group of petitions being Special Civil Application No.11921/2005 and allied matters by an order dated 22/7/2005. He points out that in view of the directions given by the Division Bench in the above mentioned order no further direction is necessary to be given in the present petition.

3. In view of the above developments, the present petition is disposed of since in view of the directions given by the Division Bench in its order dated 22/7/2005 in Special Civil Application 11921/2005 and allied matters no further direction is required to be passed in the present petition. Petition stands disposed of accordingly. Rule is discharged with no order as to costs."

1. As it has been submitted by the learned advocate appearing for both the sides by Mr. Chhaya as

well as Mr. Parmar that the matter for allotment of the land or regularisation thereof is not finalised and as per Mr. Parmar and Mr. Chhaya, the occupants are not desirous to shift to the other portion of the land, which is reserved for Kabaristhan/crematorium. It was further submitted by Mr. Chhaya that the area is a very large area reserved for Kabaristhan and the whole area is not being used for Kabaristhan and therefore, the authority was desirous to allot the portion of the land reserved for Kabaristhan but the occupants are not desirous to shift on the ground that the land is interior to the highway and it may adversely affect their existing business.

2. In my view, the said aspect is outside the subject matter of the present proceedings and therefore, this Court may not express any view on the said aspects. Suffice it to observe that the parties may pursue the rights, if any, available in law. However, it deserves to be recorded that in view of the order passed by this Court on 30.11.2006, Resident Deputy Collector, Mr. Sudhirbhai Patel has remained present and sketch of the land in occupation by the alleged encroacher is made available to the Court for perusal, and Mr. Vyas, learned counsel appearing for respondent No.1 declared before the Court that so far as any occupation upto the distance of 36 meters from the centre of the

Ahmedabad-Himmatnagar national highway line is concerned, the same shall be cleared and vacated by the concerned occupant/s if one months time is given but, after the measurement and demarcation of the land in question. Mr. Chhaya, learned AGP under the instructions of the Resident Deputy Collector, submitted that the office of the District Collector may require about three months time to get the measurement undertaken, through the District Inspector of Land Records and after the measurement is undertaken, the boundary of 36 metres from the centre of the highway will be marked and the written communication shall also be made to the concerned occupants. Therefore, if the aforesaid process is undertaken and the marking is completed and the intimation is given to the concerned occupant, in any case, the area, which is falling inside the boundary of 36 metres from the centre of the highway, is required to be cleared by all concerned and there may not be any question of regularisation of such occupationk or kaccha construction of the cabin or otherwise, upto the boundary of the national highway.

7. The another aspect, which may be required to be considered is the proceedings of Special Civil Application No. 6054/86, since the order of the Government is subject to the final order, which may be passed by the High Court in the said

proceedings. It has been submitted on behalf of the petitioner that the land was initially reserved for grazing of cattle as Gauchar land and thereafter, is marked for residential plots and therefore, when the land is assigned to the Gram Panchayat, in view of the Gujarat Panchyat Act, the Gram Panchayat has the power to assess the rent and penalty for unauthorised occupation of such land. Mr. Parmar, therefore submitted that by express provisions of the statute, the Gram Panchayat is entitled to recover the amount. He also submitted that in the impugned order passed by the State Government, the right of the Gram Panchayat to recover the rent and penalty is recognised and it is only for the purpose of assessment, the matter was referred to the Deputy Town Planner, which is under challenge in this petition. Therefore, it was submitted that the amount must go to the corpus of the Gram Panchayat. He submitted that there is no objection on the part of the Gram Panchayat in filing the undertaking as per the order passed by the Division Bench of this Court dated 10.12.2004 in Letters Patent Appeal No. 1770 of 2004 with Civil Application No. 7230 of 2004 to the effect that the Panchayat shall deposit the rent in a separate account and shall also maintain a separate account for utilisation of the money and the money shall be utilised only for the development purpose and no other purpose. However, it was submitted by Mr.

Parmar that the amount, which may be ordered by this Court to be deposited in view of the declaration made by the occupants should go to the Gram Panchayat and not with the State Government or any other authority.

8. Mr. Chhaya, learned AGP submitted that it is true that earlier, the land was reserved for residential plot, however, vide order dated 09.09.1983, passed by the State Government, the land is resumed back by the State Government and the District Collector is directed to pass the formal order and also for removal of the encroachment under Section 61 read with Section 202 of the Bombay Land Revenue Code. He therefore submitted that in view of the said order of the State Government for resumption of the land, the Gram Panchayat may not have the power to recover the rent as per Section 269 of the Act. Mr. Chhaya further submitted that as per the observations made by the Division Bench of this Court (Coram : Hon'ble the Acting Chief Justice & D.A. Mehta, J.) in its order dated 30.06.2006 in L.P.A. No. 1770 of 2004 in Special Civil Application No. 17994 of 2003, the observations are made at para 7 & 8 in the order of the Division Bench, whereby, it is observed by the Division Bench that the learned Advocate for the petitioner-appellant has not been able to establish that the property vests in or is under the control of the petitioner Panchayat

and therefore, on facts, it is not possible to accept the submission that the order of the revisional authority is per incuriam and ultimately, the Letters Patent Appeal was dismissed. It is therefore submitted that if the land is not vested or is not under the control of the petitioner panchayat, the amount may not be ordered to be deposited with the Gram Panchayat but, may be allotted to the State Government.

9. Mr. Parmar, learned counsel appearing for the petitioner submitted that Yadi of the Government order dated 09.09.1983 was also the subject matter of challenge in the proceedings of Special Civil Application No. 6054 of 1986. He submitted that a statement was made by the learned AGP in the proceedings of Special Civil Application No. 6054 of 1986, when the petition came to be considered by this Court (Coram: N.N. Mathur, J., as he then was) on 26.08.1996 to the effect that the impugned notification dated 07.12.1979 as well as 09.09.1983 are likely to be withdrawn and therefore, Mr. Parmar submitted that in view of the said statement, the Court observed that the petition does not survive and therefore, now the State Government cannot contend that the land is resumed back and vests to the Government. Therefore, it should be treated as with the Panchayat and the Panchayat should be allowed to

recover the amount. He further submitted that if the land is treated as of the Government, the only power to recover the rent or the penalty is as per the Bombay Land Revenue Code read with the Rules and if Section 61 of the Code is read with Section 48 of the Code the power to recover the amount is that of the revenue assessment and a particular number of times of the revenue assessment as and when unauthorised encroachment is made. The language is not of "the rent" but is of "the recovery of the assessment" in the penalty unlike Section 269, which provides for the rent and the penalty and therefore, he submitted that the amount may be ordered to be paid to the petitioner Gram Panchayat.

10. In my view, it prima facie appears that it is on account of the inter se dispute between the Gram Panchayat and the State Government for vesting or control of the land, the unauthorised occupant, who have encroached over the land should not be allowed to reap any benefit. It further appears that it is on account of the inter se dispute between the Gram Panchayat and the State Government, the litigations are more prolonged and ultimately, the benefit, if any, is received by unauthorised occupants who are represented by respondent No.1. I find that no further observations may be required in this regard in view of the earlier order dated 30.11.2006, reproduced hereinabove and more

particularly, that the declaration is already made on behalf of the respondent No.1 to deposit the amount as may be directed by this Court with interest.

11.It is true that as per the order passed by the State Government, the amount was to be recovered subject to the outcome of the proceedings of Special Civil Application No. 6054 of 1986 and therefore, even if the order of the State Government is to operate for recovery of the amount @ Rs.60/- per year per square yard with interest @ 12%, the proceedings of Special Civil Application No. 6054 of 1986 or the orders passed therein cannot be given a go by. Even otherwise also, the Government cannot pass the order permitting the recovery of the amount in contravention to the orders passed by this Court in the proceedings of Special Civil Application No. 6054 of 1986 and therefore, it was rightly observed to that extent.

12.If the matter is further examined for the effect of the proceedings of Special Civil Application No. 6054 of 1986, it does appear that the order of the State Government dated 09.09.1983 is brought to the notice of this Court in the proceedings of Special Civil Application No. 6054 of 1986 and so also the order dated 07.12.1979 of the State Government directing for regularisation of the unauthorised

encroachment after the allotment of the plot to the landless persons. It appears that it is in light of the consideration of the question for direction of regularisation, the observations were made by this Court in its order dated 26.08.1996 in Special Civil Application No.6054 of 1986 that the direction for regularisation deserves to be considered for withdrawal and therefore, the Court observed that the petition does not survive at this stage. The said petition in any case is over in view of the order dated 26.08.1996 passed by this Court. However, with regard to the question of vesting of the land and the control with the Gram Panchayat is concerned, it deserves to be recorded that the Division Bench of this Court, in its order dated 30.06.2006 in Letters Patent Appeal No. 1770 of 2004 observed at para 7 & 8 as under:

“7. Section 269 of the Act reads as under:

“ 269. Liability to pay rent for unauthorised occupation or possession of property of panchayat.-(1) Whoever not being duly authorised in that behalf occupies or is in possession of any property vesting in, or under the control of, a panchayat shall without prejudice to any other action which may be taken under this Act, be liable to pay in to the panchayat a sum upto four times the amount of rent which would have been payable to the panchayat for the period of such occupation or possession, had the property been let

by the panchayat.”

8. On a plain reading it becomes apparent that a person who is not duly authorized, occupies or is in possession of any property vesting in, or under control of, a Panchayat shall be liable to pay to the Panchayat rent at the specified rate as if the occupation or possession was by way of letting out the property by the Panchayat. Therefore, the section in the first instance requires that a Panchayat can call upon a person to pay the rent as stipulated by the provision in relation to any property vesting in or under the control of such a Panchayat. In the present case, as the finding of the revisional authority goes to show, there was no evidence adduced on behalf of the Panchayat to establish that the lands in question vest in the petitioner-Panchayat. It is in context of the said finding that the final direction has been made, viz. to ascertain as to in whom the ownership of the lands in question vests, and this has to be done after due scrutiny of record. In the circumstances, reliance of provisions of Section 269 of the Act is misplaced. Even in the appeal the learned advocate for the petitioner-appellant has not been able to establish that the property vests in or is under the control of the petitioner-Panchayat. Therefore, on facts, it is not possible to accept the submission that the order of the revisional authority is *per incuriam*.”

13. Therefore, it is not a matter where it can be conclusively declared that the land is vested or is under the control of the petitioner Gram

Panchayat. I find that when it is a dispute between the Gram Panchayat and the District Collector, the proper course would be to refer the matter to the High Power Committee of the State Government for entitlement and withdrawal of the amount, which may be comprising of the Secretary, Revenue Department; Secretary, Panchayat Department; District Development Officer and one representative or the Sarpanch of the petitioner Gram Panchayat. Even otherwise also, it is by now well settled that when there is inter se dispute between the two organs of the State Government, which in the present case is District Collector and the Gram Panchayat, such dispute should be as far as possible, be decided by the High Power Committee and if the dispute is not ultimately resolved, either side may have the remedy to approach before the higher forum.

14. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

1. The respondent No.1 or the occupants in question shall deposit the amount @ of Rs.60 per sq. yard per year with the interest @ 12% per annum from the date on which the proportionate amount becomes due till the actual payment within a period of three months from today, but in

installments of 33% each of the principal and the proportionate interest. The said amount shall be deposited in a separate Bank account with the District Collector, Gandhinagar and the District Collector, Gandhinagar shall keep the amount intact and shall not utilise, until contingency accrues as per the directions given hereinafter.

2. In view of the earlier direction, the District Collector shall ensure that the boundary of 36 metre from the centre of the national highway is marked through the office of the DILR and any of the occupants, who are unauthorisedly occupying within the boundary of 36 metre from the centre of the national highway, are given one month time to vacate of their own and upon such intimation, the declaration made before this Court shall be acted upon by the concerned occupant, failing which, the District Collector shall be at the liberty to remove such encroacher/s to that extent for maintaining the boundary of 36 metre from the centre of the national highway.

3. The State Government shall constitute a Committee comprising of Secretary, Revenue Department; Secretary, Panchayat

Department; District Development Officer of Gandhinagar District Panchayat and Sarpanch of the petitioner Panchayat for deciding the dispute for entitlement and utilisation of the amount, which is deposited or paid by the occupants of the land as per the earlier direction. The constitution of such Committee shall be made on or before 28th December, 2006, and the decision shall be taken by such committee within a period of three months from the constitution of the Committee. After the decision, it would be open to the District Collector to permit withdrawal or utilisation of the amount as per the decision of the Committee. However, it is clarified that the decision of the Committee shall also be communicated to the Gram Panchayat by R.P.A.D. post and the withdrawal shall be permitted after a period of 10 days from the said communication. In the event the District Collector or the Gram Panchayat is aggrieved by the decision of the Committee, it may have the recourse of challenging the said decision before the Higher Forum as may be permissible in law.

4. It is clarified that the deposit of the amount or payment of the amount by the

occupants as per the earlier directions shall not be read as having created or invested any additional right in favour of the occupant for regularisation of the unauthorised occupation/encroachment over the Government/Panchayat land. Suffice it to observe that either side shall be at the liberty to take recourse of law as may be permissible in law. However, until the question of regularisation or shifting or removal is decided in either way, the payment shall be continuously made by such occupant, after clearance of the arrears, on every year within a period of two months from the expiry of the accounting year in the next period.

15. Petition is allowed in terms of the aforesaid directions only. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

16. In view of the order passed in the main Special Civil Application, Civil Application No.6554 of 1998 shall stand disposed of accordingly.

(JAYANT PATEL, J.)

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